

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

LEROY COLLINS,

Petitioner,

Case No. 2:16-cv-01090-GMN-VCF

v.

ORDER

STATE OF NEVADA, et al.,

Respondents.

Petitioner Leroy Collins has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). However, petitioner has failed to submit an application to proceed *in forma pauperis* or pay the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

The court notes that it is unclear from the papers presented whether Collins has exhausted his available state remedies. A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his claims before he presents those claims in a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); see also *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has given the highest available state court the opportunity to consider the claim through direct appeal or state collateral review

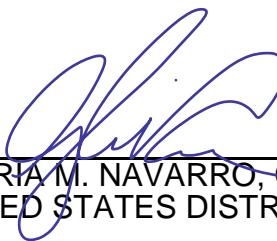
proceedings. See *Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir. 1981).

It is also unclear from the papers presented whether a dismissal without prejudice could materially affect a later analysis of any timeliness issue with regard to a new federal action. Therefore, Collins shall have thirty (30) days from the date of this order to either pay the \$5.00 filing fee or submit a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six months and a properly executed financial certificate. Failure to do so may result in the dismissal of this action without prejudice.

**IT IS THEREFORE ORDERED** that within **thirty (30) days** of the date of this order petitioner shall submit either the \$5.00 filing fee or a fully completed application to proceed *in forma pauperis*.

**IT IS FURTHER ORDERED** that failure to do so may result in the dismissal of this action without prejudice.

DATED: 11 October 2016.



GLORIA M. NAVARRO, CHIEF JUDGE  
UNITED STATES DISTRICT COURT